

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

DAVIDSON COACHY,)	
)	
Petitioner,)	
)	
v.)	Nos. 2:10-CR-82-RLJ-1
)	2:16-CV-203-RLJ
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

JUDGMENT ORDER

Before the Court is Petitioner’s motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 [Doc. 211].¹ In it, he challenges the propriety of his career offender enhancement under Section 4B1.1 of the United States Sentencing Guidelines in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015), which invalidated the residual provision of the Armed Career Criminal Act, 18 U.S.C. § 924(e), for unconstitutional vagueness [*Id.* (suggesting that his sentence is no longer valid because the residual provision in Section 4B1.2 is vague as well)].²

¹ On February 11, 2016, Federal Defender Services of Eastern Tennessee (“FDSET”) was appointed for the limited purpose of reviewing the case to determine whether or not Petitioner is eligible for collateral relief based on *Johnson*. See E.D. Tenn. SO-16-02 (Feb. 11, 2016). Consistent with that appointment, FDSET filed the instant petition.

² The ACCA mandates a fifteen-year sentence for any felon who unlawfully possesses a firearm after having sustained three prior convictions “for a violent felony or a serious drug offense, or both, committed on occasions different from one another.” 18 U.S.C. § 924(e)(1). The statute defines “violent felony” as “any crime punishable by imprisonment for a term exceeding one year” that (1) “has as an element the use, attempted use, or threatened use of physical force against the person of another” (the “use-of-physical-force clause”); (2) “is burglary, arson, or extortion, involves the use of explosives” (the “enumerated-offense clause”); or (3) “otherwise involves conduct that presents a serious potential risk of physical injury to another” (the “residual clause”). 18 U.S.C. § 924(e)(2)(B). It was this third clause—the residual clause—that the Supreme Court deemed unconstitutional in the *Johnson* decision. 135 S. Ct. at 2563.

This Court stayed the action pending resolution of several dispositive legal issues by the Supreme Court in *Beckles v. United States*. That case has been decided and in it, the Supreme Court held that the United States Sentencing Guidelines are “not amendable to vagueness challenges.” *Beckles v. United States*, No. 15-8544, 2017 WL 855781, at *7 (U.S. March 6, 2017). Thus, the *Johnson* decision does not provide a basis for vacating or correcting the instant sentence.

In accordance with the foregoing, the Court’s stay is hereby **LIFTED** and the underling § 2255 motion is **DENIED** and **DISMISSED WITH PREJUDICE**. If Petitioner files a notice of appeal from this judgment, such notice of appeal will be treated as an application for a certificate of appealability, which is **DENIED** pursuant to 28 U.S.C. § 2253(c)(2) and Fed. R. App. P. 22(b) because he has failed to make a substantial showing of the denial of a federal constitutional right. The Court **CERTIFIES** pursuant to 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24 that any such appeal from this judgment would be frivolous and not taken in good faith.

IT IS SO ORDERED.

ENTER:

s/ Leon Jordan

United States District Judge

Section 4B1.1 enhances a defendant’s offense level if he or she qualifies as a “career offender,” i.e., adult defendant whose offense of conviction is a “crime of violence or controlled substance offense” and who has “at least two prior felony convictions of either a crime of violence or a controlled substance offense.” U.S. Sentencing Manual § 4B1.1(a). “Crime of violence” under the Guidelines is defined in an almost identical manner as “violent felony” under the ACCA. *See* U.S. Sentencing Manual § 4B1.2(a) (adopting identical use-of-force and residual clauses as well as a nearly identical enumerated-offense clause).